

**H. MORGAN GRIFFITH**  
9TH DISTRICT, VIRGINIA

COMMITTEE ON  
ENERGY & COMMERCE  
SUBCOMMITTEES:

OVERSIGHT & INVESTIGATIONS  
CHAIRMAN

ENERGY, CLIMATE & GRID SECURITY

HEALTH

COMMITTEE ON  
HOUSE ADMINISTRATION  
SUBCOMMITTEE:

OVERSIGHT

[www.morgangriffith.house.gov](http://www.morgangriffith.house.gov)



**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-4069

2202 RAYBURN HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515  
(202) 225-3861 PHONE  
(202) 225-0076 FAX

323 WEST MAIN STREET  
ABINGDON, VA 24210  
(276) 525-1405 PHONE  
(276) 525-1444 FAX

17 WEST MAIN STREET  
CHRISTIANSBURG, VA 24073  
(540) 381-5671 PHONE  
(540) 381-5675 FAX

May 12, 2023

The Honorable Mike Rogers  
Chairman  
Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

The Honorable Adam Smith  
Ranking Member  
Committee on Armed Services  
2216 Rayburn House Office Building  
Washington, DC 20515

Thank you Chairman Rodgers and Ranking Member Smith for holding this hearing today, I appreciate the Committee's willingness to provide me the opportunity to discuss an unconstitutional provision that was included in the Fiscal Year (FY) 2012 National Defense Authorization Act (NDAA) and has been unchanged in each subsequent NDAA.

The FY 2012 NDAA included a provision in Section 1021(b) that greatly expanded the military's power under the 2001 Authorization for the Use of Military Force (AUMF) to indefinitely detain any member of terrorist organizations and "associated forces". This provision does not have a scienter requirement.

While our troops have withdrawn from Afghanistan after 20 long years of war, we are still engaged in hostilities throughout the region, including sub-Saharan Africa with these terrorist groups and their so-called "associated forces".

The statute essentially allows the military to detain any such person until the end of hostilities, regardless of citizenship, location, or intent. This provision is incompatible with the due process afforded to all American citizens under the Constitution.

My particular concern with this statute is that it applies to American citizen detained on U.S. soil or any legal mechanism for the American citizen on U.S. soil to challenge the detainment and thereby strips that citizen of all constitutional due process protections.

I do not believe the military can exercise the power of indefinite detention at home against U.S. citizens without due process, but the plain language of the NDAA says otherwise.

Being associated with a member of one of the targeted groups or associated forces could be as simple as innocently accepting a neighbor's request to drive them to a courthouse or other facility.

For example, imagine a case where you find a neighbor that, you don't know well, at your front door with a large briefcase. They tell you that they are sorry to bother you but their car has broken down and they need to get to a courthouse or a federal or state building. They ask you if you would be so kind as to give them a ride. Unbeknownst to you, this neighbor is transporting a bomb. Under the current provision as written, you could be indefinitely detained by the military despite having no knowledge of the neighbor's true intentions. You can be stripped of all your constitutional protections including habeas corpus. Accordingly, you have no legal ability to present to any tribunal that you are in fact an innocent bystander.

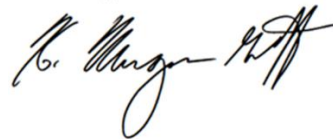
I am deeply troubled by this provision and believe that our armed forces are still able to fight terrorism effectively even with this slight change in law.

How do we know? Because thankfully they have never used this provision. But just because it has not been used is not an excuse to leave unconstitutional language in the U.S. Code.

We have a duty to defend the constitutional protections granted to United States citizens.

I urge this Committee to include language in the underlying NDAA text that would clarify that a person must have “knowingly” (*scienter*) assisted the enemies of our country. I hope to continue discussions with the Committee on specific language to correct this problem and appreciate your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "H. Morgan Griffith", with a stylized flourish at the end.

H. MORGAN GRIFFITH  
Member of Congress